

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. SACV 12-01521-CJC(RNBx)

Date: September 17, 2012

Title: ELIZABETH M. MOFFITT AND NICHOLAS E. DIBS V. MONEX DEPOSIT
COMPANY, ET AL.

PRESENT:

HONORABLE CORMAC J. CARNEY, UNITED STATES DISTRICT JUDGE

Michelle Urie
Deputy Clerk

N/A
Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFF: ATTORNEYS PRESENT FOR DEFENDANT:

None Present

None Present

**PROCEEDINGS: (IN CHAMBERS) ORDER TO SHOW CAUSE WHY THIS
CASE SHOULD NOT BE DISMISSED FOR FAILURE TO STATE A CLAIM**

Pro se Plaintiffs filed this action against Defendants asserting nine causes of action. Plaintiffs' action relates to an investment contract for gold. Based upon a review of the Complaint, it appears that Plaintiffs' claims fail to state a claim because they are inadequately pled pursuant to Federal Rules of Civil Procedure 8 and 9. Plaintiffs' allegations do not provide sufficient facts to give Defendants notice of the nature of the allegations against them.

At least six of Plaintiffs' causes of action sound in fraud. Federal Rule of Civil Procedure 9(b) requires that fraud allegations be stated with particularity. They must "state the time, place and specific content of the false representations as well as the parties to the misrepresentations." *Alan Neuman Productions, Inc. v. Albright*, 862 F.2d 1388, 1392 (9th Cir. 1988) (citation and quotes omitted). Rule 9(b) is satisfied if the complaint alleges the "who, what, when, where and how" of the allegedly fraudulent conduct. *Cooper v. Pickett*, 137 F.3d 616, 627 (9th Cir. 1997). While Plaintiffs allege generally that Defendants engaged in fraudulent conduct, the Complaint appears to lack the specificity required by Rule 9(b). Further, Plaintiffs' first cause of action alleges a RICO violation. In order to state a claim under RICO, plaintiffs must allege, among other things, a racketeering offense, a pattern of racketeering activity, that the activity affects an enterprise involved in interstate commerce, and that the culpable person is

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distinct from the enterprise. Plaintiffs allege that Defendants committed mail fraud, but do not appear to adequately state the other elements of a RICO claim. Plaintiffs' remaining claims similarly do not appear to meet Rule 8's requirement that a claim for relief contain "a short and plain statement of the claim showing that the pleader is entitled to relief."

Accordingly, the Court orders Plaintiffs to show cause why this case should not be dismissed for failure to allege any cognizable claim. Plaintiffs shall file an opposition to the Court's order to show cause by October 1, 2012. Defendants shall then have until October 9, 2012 to file a response. This matter will be decided on the papers without any hearing.

jmc

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